

FILED

OCT 05 2020

SUBAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

1 SERGENIAN ASHBY LLP
2 Joseph R, Ashby (SBN 248579)
3 joseph@sergenianashby.com
4 1055 West Seventh Street, 33rd Floor
5 Los Angeles, CA 90017
6 Telephone: (323) 318-7771

Attorneys for Applicant Olegs Fils

NC

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

CV-20 80176 MISC
NO.

10 IN RE OLEGS FILS,
11 Applicant ,

12
13
14 For Order Authorizing Discovery For
15 Use In Foreign Proceedings Under 28
16 U.S.C. § 1782

**DECLARATION OF AGRIS
BITANS IN SUPPORT OF EX
PARTE APPLICATION FOR THE
ISSUANCE OF SUBPOENAS
DUCES TECUM PURSUANT TO 28
U.S.C. § 1782 TO SPECIALIZED
HELICOPTERS, INC., HYATT
CORPORATION, THE
HIGHLANDS INN, INC., BURST +
BLOOM, SOMMPICKS LLC,
BENCHMARK WINE GROUP,
INC., AND BELMONT WINE
EXCHANGE, LLC**

By Fax

21
22
23
24
25
26
27
28
DECLARATION OF AGRIS BITANS

DECLARATION OF AGRIS BITANS

I, Agris Bitans, declare as follows:

1. I am a citizen of the Republic of Latvia, and I currently reside in Riga, Latvia. I am over the age of twenty-one years old, I have never been convicted of a crime involving moral turpitude, and I am competent to make the statements contained herein. I declare under penalty of perjury that the foregoing is true and correct and within my personal knowledge.

2. I am a lawyer and represent Olegs Fils ("Mr. Fils"), the claimant in proceedings currently before a court in Latvia (Case No.C30657918) (the "Latvian Proceedings") against his former wife, Ms. Santa Bernahl (previously – Ms. Zamuele) ("Ms. Bernahl"). In this capacity, I have personal knowledge regarding the facts contained in this affidavit.

3. After Ms. Bernahl and Mr. Fils divorced in March 2018, Mr. Fils discovered that Ms. Bernahl had been involved in an extra-marital relationship with Mr. David Bernahl ("Mr. Bernahl"). This discovery came, in part, through posts from private social media accounts, in which Mr. and Ms. Bernahl are seen embracing and kissing during the time Ms. Bernahl and Mr. Fils were still married. As an example, Mr. Fils has provided me with an Instagram post on Mr. Bernahl's account, where Mr. and Ms. Bernahl are pictured in front of a helicopter at a downtown Manhattan heliport in New York City. This picture is believed to have

-1-
DECLARATION OF AGRIS BITANS



1 been taken in August 2017. *See* Exhibit A, photo of Mr. and Mrs. Bernahl in or
2 about August 2017.

3
4 4. In addition, the case materials of the Latvian Proceedings contain the
5 following relevant Instagram posts: In Mr. Bernahl's posts from December 8, 2017
6 and January 16, 2018 (at the time when Ms. Bernahl was visiting California, where
7 Mr. Bernahl resides), Mr. and Ms. Bernahl are pictured embracing, while the
8 captions read "Luckiest guy in the world... (continued)" and "Moments #❤️"
9 respectively. *See* Exhibits B and C, photos of Mr. and Ms. Bernahl. In Mr.
10 Bernahl's post from January 26, 2018, geotagged as having been taken in Big Sur,
11 California, Ms. Bernahl's children are pictured. *See* Exhibit D, photo of Ms.
12 Bernahl's children.
13
14

15
16 5. Ms. Bernahl's bank account statements demonstrate she used the funds
17 that Mr. Fils gifted to her to pay for hotel stays at the Hyatt Carmel Highlands
18 (owned by the Hyatt Corporation incorporated as the Highlands Inn, Inc.) in
19 September and December 2017. *See* Exhibit E.
20

21 6. Ms. Bernahl's bank account statements demonstrate she used the funds
22 that Mr. Fils gifted to her to charter a helicopter flight in August 2017 operated by
23 Specialized Helicopters, Inc. *See* Exhibit E, Credit Card Statement of Ms. Bernahl
24 showing charges of Specialized Helicopters, each in the amount of 2 820,80 EUR.
25

26 7. Additionally, the statements demonstrate charges by Burst + Bloom
27 and multiple retailers of fine alcoholic beverages (Sommicks, LLC, Benchmark
28

1 Wine Group, Inc., and Belmont Wine Exchange, LLC). *See* Exhibit E, Credit Card
2 Statement.

3
4 8. As a result of Ms. Bernahl's infidelity, Mr. Fils has instituted claims in
5 the Latvian Proceedings seeking to cancel several gift agreements he entered into
6 with Ms. Bernahl, on the basis of gross ingratitude and for her fault in the
7 dissolution of the marriage. In the Latvian Proceedings, Mr. Fils seeks to recover
8 items and funds valued at €2.4 million from Ms. Bernahl that Mr. Fils gifted to her.
9 Ms. Bernahl has disposed of or transferred most of her assets, including these gifts
10 and monies, to foreign accounts and/or to family members. As a result, Mr. Fils has
11 also instituted claims in the Latvian Proceedings seeking to declare some of Ms.
12 Bernahl's transfers and concealment of these items and funds as null and void.
13
14

15 9. The Latvian court has already found that Ms. Bernahl acted in bad faith
16 because she has provided misleading information to the Latvian court and she
17 concealed the property and funds Mr. Fils gifted her. Under Articles 137(1) and
18 140(1) of the Latvian Civil Procedure Law, the court may secure a claim provided,
19 *inter alia*, there are reasonable grounds to believe that enforcement of the court
20 judgment otherwise may become problematic or impossible (in this case, mostly due
21 to concealment of assets, towards which the claim could be enforced), and that
22 *prima facie* the claim has a legal basis. The Latvian court has therefore repeatedly
23 sustained Mr. Fils' applications to secure his claim by seizing movable property,
24
25
26
27
28



1 real estate, and cash belonging to, as well as payments due to, the defendants in the
2 Latvian Proceedings.

3
4 10. In order to demonstrate Ms. Bernahl's gross ingratitude and fault in the
5 dissolution of the marriage, we must present evidence of Ms. Bernahl's infidelity
6 and gross ingratitude towards Mr. Fils through other actions and attitudes.

7
8 11. Depending on the content of the documents obtained from Specialized
9 Helicopters, Inc., the Hyatt Corporation, and the Highlands Inn, Inc., these
10 documents could be used in the Latvian Proceedings to demonstrate that Mr. and
11 Ms. Bernahl were in each other's company during the time Ms. Bernahl and Mr. Fils
12 were married. The documents obtained from Specialized Helicopters, Inc. and the
13 Hyatt Corporation could show that during August, September, and December 2017,
14 Mr. and Ms. Bernahl, while on vacation, were guests in the hotel as a couple, flew in
15 a chartered helicopter together as a couple, and that Ms. Bernahl paid for these
16 extravagant hotel stays and helicopter services with funds gifted to her by Mr. Fils.
17
18

19
20 12. Depending on the content of the documents obtained from Burst +
21 Bloom, Sommpicks, LLC, Benchmark Wine Group, Inc., and Belmont Wine
22 Exchange, LLC, these documents could be used to show that that Ms. Bernahl made
23 an extravagant floral purchase to be sent to Mr. Bernahl's home, as well as multiple
24 purchases of fine alcohol to be gifted to Mr. Bernahl, all while she was still married
25 to Mr. Fils.
26
27
28

AB

1 13. In short, the documents obtained from Specialized Helicopters, Inc., the
2 Hyatt Corporation, the Highlands Inn, Inc., Burst + Bloom, Sommpicks, LLC,
3 Benchmark Wine Group, Inc., and Belmont Wine Exchange, LLC (“collectively the
4 Merchants”), could be used as evidence in the Latvian Proceedings to ultimately
5 help demonstrate that Ms. Bernahl was unfaithful to Mr. Fils in at least August
6 2017, September 2017, November 2017, December 2017, and February 2018, while
7 Ms. Bernahl and Mr. Fils were still married, and that Ms. Bernahl paid for her and
8 her lover’s luxury expenses with funds gifted to her by Mr. Fils, thus supporting Mr.
9 Fils’ claim of gross ingratitude and justifying the cancellation of the gift agreements.
10

11
12 14. The Merchants are not participants in the Latvian Proceedings. Thus,
13 apart from the Hague Convention, the Latvian court lacks any other reasonable
14 method of compelling the Merchants to produce information and documents that
15 will evidence and demonstrate Ms. Bernahl’s infidelity.
16

17
18 15. There is nothing in Latvian law that would prevent Mr. Fils from
19 utilizing such evidence in the Latvian Proceedings, and there is no indication that
20 the Latvian court would be unreceptive to assistance from this Court.
21

22 16. Finally, were this information available in Latvia, the parties to the
23 Latvian Proceedings would be able to obtain such discovery. But because this
24 evidence is obtainable only from the Merchants—companies only incorporated and
25 present in the United States and not Latvia—this Court’s assistance is required in
26 obtaining the documents necessary to show that in August 2017, September 2017,
27
28

-5-
DECLARATION OF AGRIS BITANS



1 November 2017, December 2017, and February 2018, Ms. Bernahl carried on an
2 extra-marital affair. There is nothing pursuant to Latvian law, or to any rule of civil
3 procedure, regulation or statute under Latvian law that prohibits gathering of
4 evidence via Section 1782 and use of the same in the Latvian Proceeding.
5

6 17. The information Mr. Fils seeks from Specialized Helicopters, Inc., is
7 narrowly tailored. Mr. Fils seeks documents for only the time period of August 1,
8 2017 through August 31, 2017. These documents could show that during August
9 2017, Mr. and Ms. Bernahl, while on vacation, boarded a helicopter chartered
10 through Specialized Helicopters, Inc., as a couple. Thus, the documents seek only to
11 demonstrate Ms. Bernahl's reservation of, and status as passenger of, Specialized
12 Helicopters, Inc.
13
14

15 18. The information Mr. Fils seeks from Hyatt Corporation and the
16 Highlands Inn, Inc. is only for a narrowly tailored period of time. Indeed, as to
17 these entities, Mr. Fils seeks only documents for the dates of September 1, 2017
18 through September 30, 2017, and December 1, 2017 through January 15, 2018, and
19 at that, only documents related to Mr. and Ms. Bernahl's reservations and stay as
20 guests of the Hyatt Carmel Highlands.
21
22

23 19. Similarly, the requests made of the remaining Merchants are narrowly
24 tailored. Mr. Fils seeks documents from Burst + Bloom only for the time period of
25 August 2017; from Sommpicks, LLC for the time period of November 2017; and
26 from Benchmark Wine Group, Inc. and Belmont Wine Exchange, LLC for the
27
28



1 month of February 2018. At that, Mr. Fils seeks only documents related to the
2 orders from these Merchants that will help demonstrate Ms. Bernahl's infidelity and
3 gross ingratitude (i.e., delivery address, recipient, etc.).
4

5 20. Thus, the subpoenas are not unduly intrusive or burdensome. They are
6 narrowly tailored and precisely fashioned as to particular dates that appear as
7 charges on Ms. Bernahl's credit card statement.
8

9 Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the
10 laws of the United States of America that the foregoing is true and correct."
11

12 Executed on September 28, 2020 in Riga, Latvia.

13
14 

15 Agris Bitans
16
17
18
19
20
21
22
23
24
25
26
27
28